

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

**GALLATIN RIVER COMMUNICATIONS     )  
L.L.C. D/B/A CENTURLINK            )**

**Petition for Arbitration Pursuant to     )  
Section 252(b) of the Communications Act     )  
of 1934, as amended by the                )  
Telecommunications Act of 1996            )  
To Establish the Rates, Terms, and         )  
Conditions of Interconnection with         )  
NTS Services Corp.                         )**

**Docket No. 11-0567**

**RESPONSE TO PETITION FOR ARBITRATION**

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**NTS SERVICES CORP.'S  
RESPONSE TO CENTURYLINK'S PETITION FOR ARBITRATION**

NTS Services Corp. ("NTS"), by and through its counsel, hereby provides this Response to CenturyLink's Petition for Arbitration ("Petition"). NTS agrees with CenturyLink ("CTL") that the parties are at an impasse with regard to the correct TELRIC rate for two unbundled network elements ("UNE"). NTS disagrees, however, that those are the only issues that should be considered in this arbitration. There are several other pricing issues that should also be addressed.<sup>1</sup>

**NTS' Position on the Method to Determine the Rates to be Charged**

Currently, CTL is invoicing NTS based on the prices contained in the previous interconnection agreement between the parties. This has been the case since December 3, 2009. These prices are subject to true-up following the establishment of final pricing at the conclusion of this arbitration.

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<sup>1</sup> All references to CTL's proposed charges can be located in Appendix A to the Petition for Arbitration, specifically Article XI, beginning on page 186.

As CTL acknowledges in its Petition, the FCC requires prices for unbundled network elements to be based on total elemental long run incremental cost, or “TELRIC.” On July 19, 2011, CTL provided NTS with a TELRIC cost study allegedly supporting the rates contained in Article XI of the interconnection agreement. CTL provided a slightly revised TELRIC cost study in response to Staff’s first set of data requests.

NTS’ consultant, Fred Miri, has reviewed the cost studies and, to the extent the study can be understood, does not believe that the study can be accurate.<sup>2</sup> As such, NTS believes the rates proposed by CTL currently being challenged can not be supported.

The TELRIC standard only allows costs necessary to maintain the existing network plant, i.e. forward-looking network costs. This Commission made this point very clear in its decision in Docket 02-0864 analyzing SBC’s proposed UNE rates. Without the raw data supporting these costs, no one can properly analyze them.

According to Mr. Miri’s review thus far, the annual charge factors (“ACF”) for direct costs such as cost of capital, maintenance, and taxes appear much higher and inconsistent than in other cost studies he has reviewed. The category of “Other Direct Costs” appears to include such things as CTL’s corporate airplanes; entire buildings; retail call centers; retail marketing; advertising and other non-wholesale service costs. During negotiations, CTL could not satisfactorily explain the inclusion of these items and insisted that it was proper.

It was never the intent of Congress or the FCC that the entire retail cost for CTL to provide service including business office; marketing; advertising; etc. be included when determining the proper TELRIC pricing. CTL has also refused to provide the underlying mechanisms by which it chose its underground, aerial, feeder, drop, network

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<sup>2</sup> See NTS Exhibit 1, Testimony of Fred Miri.

interface device (“NID”) and digital loop carrier (“DLC”) investments. Likewise, a sizable investment in poles could not be explained given that many of the poles are jointly owned with the power company. A review of the maintenance records might reveal that the power company is responsible for maintaining and replacing them. CTL has not indicated on what basis the labor portion of the costs is derived and what underlying contracts exist for the placement of the facilities in question.

Given the vast discrepancy between the rates proposed in the new interconnection versus the prior agreement, this raises the question as to whether the prior rates were based on TELRIC. If so, it is simply impossible that the new rates could be so much higher particularly for a company like CTL that is much larger than Madison River Communications, the parent company of Gallatin River Communications. CTL has vastly greater economies of scale and as such, the imputed costs in the TELRIC study should be lower, thereby resulting in lower prices for UNEs. Instead, the prices are substantially higher.

Moreover, the rates proposed are not “just and reasonable” as required by Section 252(d)(1). Imposing these rates, particularly with a true-up extending more than two years, would be catastrophic to NTS’ business and likely to any other CLEC operating in a CTL exchange area in Illinois. The total monthly invoiced amount from CTL to NTS would expand by greater than 100%. That would be impossible to recoup without dramatically raising customers’ rates or losing any hope of competing in the market.

Without a clear, comprehensible cost study, the only way for a CLEC to propose UNE rates is to extrapolate through logic. It must compare the previous rates with the

new rates proposed, and compare those rates to those prevailing in similar density local exchanges. NTS used these methods to develop its proposed rates.

Finally, it must be noted that CTL's demand that NTS provide a cost study to justify the rates proposed by NTS is simply wrong. Nothing in the Telecommunications Act or any state regulation requires a competitive local exchange carrier ("CLEC") to produce a cost study to challenge rates. Rather, the CLEC along with the relevant state commission must analyze the TELRIC cost study to determine whether it is accurate. CTL has the legal burden to produce a valid cost study to support its proposed rates, not NTS.

#### CenturyLink's Proposed Rate for DS-0 Loops is Not Supportable

NTS' previously paid a loop rate of less than \$18.00 for loops in Pekin. Per CTL's letter of August 2, 2011,<sup>3</sup> the current proposal is \$26.85. That is actually a reduction from a previously proposed rate of \$32.75.<sup>4</sup> Just logically, such a price increase can not possibly be explained. The maintenance costs for the plant in Pekin can not have increased so dramatically.

NTS also considered the prices charged by AT&T for a DS-0 loop in the Bartonville exchange. That rate is \$14.91 and AT&T considers Bartonville to be in its most rural rate band. Pekin has a population five times that of Bartonville and is a commercial center for Tazewell County. The middle, suburban rate band for AT&T is \$12.40. NTS believes that Pekin is more similar to a suburban exchange and the pricing should roughly match. Frontier's rates are nowhere close to CTL's proposed rates either.

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<sup>3</sup> See Exhibit B to the Petition.

<sup>4</sup> Id.

As such, NTS proposed a rate of \$12.50 for Pekin. The DS-0 rates for the more rural Manito and South Pekin exchanges served by NTS are extremely high—CTL set the rate at \$106.72. That price would not only be the highest price for a UNE DS-0 loop in Illinois, but quite possibly the highest in the nation.

Considering that CTL offers a retail basic phone line at \$19.00 to its customers it is quite clear that if its pricing is sustained, CTL will drive out every competitor in Pekin and the surrounding communities. We do not believe that these rates can possibly be supported by a cost study or simple logic.

#### CenturyLink's Proposed Rate for DS-1 Loops is Not Supportable

In developing its rate for a DS-1 loop, NTS followed the same logic as above. The Bartonville DS-1 rate is similar to the \$99.00 rate for Pekin proposed by NTS. That is lower than the \$121.97 proposed by CTL. In this case, NTS is accepting a rural banded rate as a proxy even though Pekin is substantially denser than Bartonville.

#### Additional CenturyLink's Charges are Not Supportable

CenturyLink also introduced several non-recurring charges in its new pricing sheet in Article XI of the proposed interconnection agreement. NTS believes the scope of the arbitration should be expanded to include Commission review of the following charges:

- Tag and label on a reinstall or an existing loop or resale (key code I005)- proposed price of \$12.26.

- NTS argues there should be no charge for CTL to properly label loops, particularly its own.
- Acceptance Testing of 2-wire and 4-wire loop (key codes I0014, I0015)- proposed price of \$53.66 and \$65.92
  - NTS argues that this price is too high and the cost for a 4 wire loop should not be higher.
- Trouble isolation charge (key code I0016)- proposed price of \$68.76
  - NTS argues that this is a new charge and there is no basis for it being added to the new interconnection agreement.
- Loop installation charges (key codes I0027-29; 38-40; 49-50; 71-72; 81-82; 101-102; 111-12; )- proposed prices vary
  - NTS argues the price should be similar to current pricing of \$13.00.
- Loop disconnection charges (key codes I0030; I0041; I0052; I0073; I0083; I0103; I0113; I0123; and others without key codes)- proposed prices of \$24.42-\$60.53.
  - NTS argues there should be no charge for this service consistent with the situation now.
- DS-0 911 per port (minimum of 2 DS-0s required)- proposed non-recurring charge of \$262.76 and recurring charge of \$102.60.
  - NTS argues that these charges are inflated.

### Conclusion

The proposed rates by CTL can not be supported by a thorough analysis of its TELRIC cost study. NTS requests the Commission carefully review the cost study and determine the appropriate rates for DS-0 and DS-1 UNE loops. NTS also requests that the additional charges described above be investigated.

Respectfully submitted,



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Kristopher E. Twomey  
Counsel to NTS Services Corp.



## CERTIFICATE OF SERVICE

The undersigned attorney for NTS Services Corp. hereby certifies that this Response to the Petition for Arbitration was filed via the Illinois Commerce Commission's e-filing system.

A handwritten signature in black ink, appearing to read "Kristopher E. Twomey". The signature is fluid and cursive, with a long horizontal stroke at the end.

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Kristopher E. Twomey  
Counsel to NTS Services Corp.